

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 SEAN ROBBINS,

12 Plaintiff,

13 v.

14 LDM-PROPERTIES, LLC, et al.,
15 Defendant.
16

Case No. 8:22-cv-00933-CJC-KES

ORDER REMANDING CASE TO
STATE COURT

17 **I.**

18 **BACKGROUND**

19 On January 18, 2022, Sean Robbins (“Plaintiff”) brought an action for
20 unlawful detainer against Beniamino Cattaneo (“Removing Defendant”) and others
21 (collectively, “Defendants”) in the Superior Court of California for the County of
22 Orange (“OCSC”), case number 30-2022-01241263-CL-UD-CJC (“UD Case”).
23 (Dkt. 1 [“Notice of Removal”].) The Complaint alleges that Plaintiff purchased the
24 real property located at 32091 Point Place (also known as 32029 Point Place) in
25 Laguna Beach, California, “by virtue of a foreclosure sale duly held pursuant to a
26 power of sale under a Deed of Trust.” (*Id.*, Ex. 1 [“Complaint”] ¶ 5.) Plaintiff
27 alleges that Defendants are in unlawful possession of the subject property. (*See*
28 generally, Complaint.)

On May 5, 2021, Removing Defendant filed a Notice of Removal removing this unlawful detainer to federal court. (*Id.*) The Notice of Removal alleges that Plaintiff, an individual, “is not organized or licensed to do business in California.” (*Id.* at 2.) It further alleges that the sale of the property was a sham and that Removing Defendant “will not be able to receive a fair hearing or trial in [OSCS] in that she will be denied due process because [OSCS] will ignore any evidence if there is a trustee’s deed upon sell, whether valid or invalid, denying defendant an opportunity to be heard.” (*Id.* at 3.) Removing Defendant asserts that the Court has jurisdiction under 28 U.S.C. § 1332 (diversity) and § 1343 (deprivation of Constitutional rights). For the reasons that follow, the Court *sua sponte* REMANDS this action to OCSC for lack of subject matter jurisdiction.

II.

DISCUSSION

“The right of removal is entirely a creature of statute and a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.” Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 32 (2002) (citation omitted). Where Congress has acted to create a right of removal, those statutes are strictly construed against removal jurisdiction. *Id.*; Nevada v. Bank of Am. Corp., 672 F.3d 661, 667 (9th Cir. 2012); accord Jordan v. Nationstar Mortg. LLC, 781 F.3d 1178, 1183 (9th Cir. 2015). Unless otherwise expressly provided by Congress, a defendant may remove “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a); accord Dennis v. Hart, 724 F.3d 1249, 1252 (9th Cir. 2013). The removing defendant bears the burden of establishing federal jurisdiction. Abrego v. The Dow Chem. Co., 443 F.3d 676, 682 (9th Cir. 2006). “Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant to that provision, [the removing defendant] must demonstrate that original subject-matter jurisdiction lies in the federal courts.” Syngenta Crop Prot., 537 U.S. at 33. Failure

1 to do so requires that the case be remanded, as “[s]ubject matter jurisdiction may
 2 not be waived, and ... the district court must remand if it lacks jurisdiction.”
 3 Kelton Arms Condo. Owners Ass’n v. Homestead Ins. Co., 346 F.3d 1190, 1192
 4 (9th Cir. 2003).

5 “If at any time before final judgment it appears that the district court lacks
 6 subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). “It is
 7 elementary that the subject matter jurisdiction of the district court is not a waivable
 8 matter and may be raised at any time by one of the parties, by motion or in the
 9 responsive pleadings, or *sua sponte* by the trial or reviewing court.” Emrich v.
 10 Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988); accord Carolina Cas.
 11 Ins. Co. v. Team Equip., Inc., 741 F.3d 1082, 1086 (9th Cir. 2014).

12 **A. Diversity Jurisdiction (28 U.S.C. § 1332).**

13 Diversity jurisdiction exists when “the matter in controversy exceeds the sum
 14 of \$75,000, exclusive of interest and costs, and is between ... citizens of different
 15 States.” 28 U.S.C. § 1332(a)(1). “The party asserting diversity jurisdiction bears
 16 the burden of proof.” Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9th
 17 Cir. 2001) Diversity jurisdiction here is lacking.

18 First, Removing Defendant has not alleged that all adverse parties are
 19 diverse. Individuals are considered “at home” for purposes of diversity jurisdiction
 20 in their place of domicile where they “reside with the intention to remain.” Kanter
 21 v. Warner–Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). While the Notice of
 22 Removal asserts that Plaintiff “is not organized or licensed to do business in
 23 California,” this statement is nonsensical in reference to an individual and
 24 insufficient to allege Plaintiff’s place of residence.

25 Second, Removing Defendant fails to allege that all Defendants have
 26 consented to removal. Under the judicially-established unanimity rule, all
 27 defendants who have appeared must unite in a petition for the removal to a federal
 28 court when a joint cause of action is alleged against all defendants. See Chicago,

1 R.I. & P. Ry. Co. v. Martin, 178 U.S. 245, 245 (1900). Although there is no
 2 particularly prescribed manner in which codefendants' joinder must be expressed,
 3 the Notice of Removal must contain at least "an averment of the other defendants'
 4 consent." Proctor v. Vishay Intertechnology Inc., 584 F.3d 1208, 1225 (9th Cir.
 5 2009). There is no such averment here from any codefendant who has appeared.
 6 (See UD Case, Register of Actions nos. 78, 79, 80, 81 [answers filed by Lisa
 7 Duamarell, Stephen Mills, Antonella Pezzola, and Ilaria Cattaneo].)

8 Third, the amount in controversy requirement has not been met since the
 9 underlying action is a limited civil action that does not exceed \$25,000. 28 U.S.C.
 10 § 1332(a).

11 Fourth, Removing Defendant appears to be a citizen of California, given that
 12 his address listed on the Notice of Removal is in Laguna Beach, California, i.e., the
 13 subject property of the unlawful detainer action. Removal on the basis of diversity
 14 is not permitted by defendants who are "at home" in the state. 28 U.S.C.
 15 § 1441(b)(2).

16 **B. Deprivation of Constitutional Rights (28 U.S.C. § 1343).**

17 Removing Defendant also alleges jurisdiction pursuant to 28 U.S.C. § 1343,
 18 which grants district courts original jurisdiction over actions "commenced by any
 19 person" to redress the deprivation of constitutional rights. Jurisdiction under
 20 § 1343 is limited actions involving: (1) conspiracy to interfere with civil rights;
 21 (2) failure to prevent or aid in preventing a conspiracy to interfere with civil rights;
 22 (3) deprivation of rights under color of state law; and (4) acts of congress for
 23 protection of civil rights. 28 U.S.C. § 1343(a)(1)-(4). None of these grounds for
 24 jurisdiction exist here.

25 The underlying complaint is for unlawful detainer, not deprivation of
 26 constitutional rights, and to the extent Removing Defendant asserts jurisdiction is
 27 proper because she "will be denied due process" in OCSC, that is not a proper basis
 28 for jurisdiction under § 1343. "[T]he existence of federal jurisdiction depends

solely on the plaintiff's claims for relief and not on anticipated defenses to those claims." ARCO Envtl. Remediation, L.L.C. v. Dept. of Health and Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000); accord City of Oakland v. BP PLC, 960 F.3d 570, 577 (9th Cir.), opinion amended and superseded on other grounds on denial of reh'g, 969 F.3d 895 (9th Cir. 2020), and cert. denied sub nom. Chevron Corp. v. Oakland, CA, No. 20-1089, 2021 WL 2405350, 2021 U.S. LEXIS 3100 (U.S. June 14, 2021). Indeed, "it is now settled law that a case may *not* be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." Caterpillar Inc. v. Williams, 482 U.S. 386, 393, (1987); see Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994), as amended (Sept. 7, 1994) ("neither an affirmative defense based on federal law, nor one based on federal preemption renders an action brought in state court removable") (citations omitted).

III.

CONCLUSION

This Court does not have subject matter jurisdiction over this case. IT IS THEREFORE ORDERED that this matter be REMANDED to the Superior Court of the State of California for the County of Orange.

DATED: May 10, 2022


CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

Presented by:


KAREN E. SCOTT
UNITED STATES MAGISTRATE JUDGE